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of their crops for same time, for permanent injury done their land, and for an injunction. *Held,* the damage to the land would be the difference in the market value before and after the injury. *Watson et al.* v. *Colusa-Parrot Mining & Smelting Co.* (1905), — Mont. —, 79 Pac. Rep. 14.

The defendant alleges the prescriptive right to commit the acts above stated. No right can be acquired by custom or prescription to cast debris into a stream to be carried down and deposited upon the property of a lower riparian proprietor to his injury. *People* v. *Gold Mining Co.,* 66 Cal. 138, 56 Am. St. Rep. 80. The injury for which damages are sought arose from individual acts of different mine operators. And it is a rule of law that damages must result as the natural and proximate effect of the wrongful act charged. *Bristol Mfg. Co.* v. *Gridley,* 28 Conn. 201. This being so the defendant is liable to plaintiff for whatever damage it caused, and not for that produced by the acts of others regardless of the difficulty of determining what part of the damage is occasioned by the acts of each. *Sellick* v. *Hall,* 47 Conn. 260. The damage to the land would be the difference in the market value of the premises before and after the trespass. *Sweeny* v. *Mont. Cent. Ry. Co.,* 19 Mont. 163, 47 Pac. Rep. 791.

PLEADING—COMMON COUNTS—CODE.—Defendant, upon the solicitation of a member of the faculty of Columbia University, agreed to, and did furnish and equip with the necessary apparatus, a hydraulic engineering laboratory at his own expense. The gift was, at the request of the donor, designated a memorial to his father. The equipment of said laboratory was furnished by the plaintiff, a corporation, of which defendant was president and owned a large amount of stock. In an action against defendant for the value of the equipment, plaintiff declared upon a common count. The trial court held, that under the code a recovery could not be had upon a common count. *Held,* error. *Henry R. Worthington* v. *Worthington* (1905), — N. Y. —, 91 N. Y. Supp. 443.

In discussing the spirit of the code procedure, Mr. Pomeroy, in his REMEDIES AND REMEDIAL RIGHTS, §§ 75, 544 (§§ 15, 438, 4th ed.), observes that New York jurists were originally divided as to the intent of the Legislature relative to pleading under the code. The first view, which did not survive, was that the Legislature intended to abolish only certain names and certain technical rules of mere form. The second view, which is now firmly established, was that the pleader must narrate in plain and concise language the actual facts from which the rights and duties of the parties arise, and not his conception of their legal effect. "And yet," he says, "with great inconsistency, as it seems to me, the courts have generally held that the ancient forms of common law pleading in assumpsit may be used in actions upon contract, especially where the contract is implied; that they sufficiently meet the requirements of the codes, although they do not set out the actual facts of the transaction from which the legal right arises." This reasoning appears flawless, but the courts have not been disposed to follow it. That there is no abatement of the practice in New York is illustrated by the principal case, and elsewhere, by the following recent cases: *Johnson-*

Brinkman Co. v. *Central Bank,* 116 Mo. 558; *Fox.* v. *Easter,* 10 Okla. 527; *School Dist. No. 9* v. *School Dist. No. 5,* 118 Wis. 233; *Brown* v. *Board of Education,* 103 Cal. 531; *Burton* v. *Rosemary Mfg. Co.,* 132 N. C. 17. But the rule has not received universal acceptance, and in the following cases the courts refuse longer to permit fictions to take the place of facts: *Bank* v. *Corbett,* 2 Minn. 209; *Pioneer Fuel Co.* v. *Hager,* 57 Minn. 76; *Penn. Mutual Life Ins. Co.* v. *Conoughy,* 54 Neb. 123; *Ball* v. *Beaumont,* 59 Neb. 631, 633; *Bowen* v. *Emmerson,* 3 Ore. 452; *Hammer* v. *Downing,* 39 Ore. 504. And in Connecticut the rule is peculiar. *Cummings* v. *Gleason,* 72 Conn. 587; *McNamara* v. *McDonald,* 69 Conn. 484. Although excluded in a few states, the use of the common counts seems to be well settled. In fact, their application has been so liberal in many states that the plaintiff is permitted to recover on a common count (quantum meruit) when the evidence discloses a special contract, the court in such cases giving to the pleading an effect not recognized at the common law. The only effect in such a case of proof of an express contract fixing the price is that the stipulated price becomes the quantum meruit in the case. *Jenney Electric Co.* v. *Branham,* 145 Ind. 314; *Roberts* v. *Leak,* 108 Ga. 806; *Hecla Gold Mining Co.* v. *Gisborn,* 21 Utah 68; *Vanderbeek* v. *Francis,* 75 Conn. 467. Contra. *Roche* v. *Baldwin,* 135 Cal. 522; *Duncan* v. *Gray,* 108 Ia. 599; *Bond* v. *Corbett,* supra; *Burton* v. *Rosemary,* supra. The common counts general in form, were introduced originally to take the place of the detailed and intricate pleading at the common law, and immediately found favor because of their convenience. Their general use before the adoption of the code is in some measure a justification for what is believed to be a clear violation of the mandate of the Legislature as expressed in the reformed procedure acts.

RAILROADS—CONSOLIDATION—CONDEMNATION OF DISSENTING STOCK.—Pursuant to legislative authority the plaintiff leased the New Haven and Derby Railroad for 99 years. By a special statute the plaintiff was authorized to exchange its own shares for the shares in any railroad which it might lease, and after acquiring all such shares the stock and franchises of the respective companies could be merged. All but two shares of the outstanding stock of the lessee were acquired by plaintiff. They were owned by defendant, who refused to agree on terms of purchase. Condemnation proceedings were brought under a Connecticut law authorizing a railroad company, which has acquired more than three-fourths of the stock of another railroad company, and cannot agree with the holders of the outstanding stock for the purchase thereof, to condemn it on a finding by the court that it will be for the public interest. In this case the lessee railroad, having a mileage of 17 miles, and a funded indebtedness of $1,200,000, forms an important link in all rail route between Boston and the West. Extensive improvements are necessary, the means for which the lessee company does not possess, but which are possessed by the condemning company. *Held,* (1) that the Legislature has power to authorize condemnation proceedings, (2) that such condemnation will serve the public interest, (3) that the law does not impair the obligation of contracts. *New York, New Haven & Hartford Railroad Company* v. *Offield* (1905), — Conn. —, 59 Atl. Rep. 510.